

## Summary of Recommendations

### Scheduled Tribes & Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

1 The National Advisory Council (NAC) recognizes that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 was a landmark legislation that aimed to undo the historical injustice done to tribals and other forest dwellers by non-recognition of their forest rights. However, it has not yet succeeded fully in achieving its objectives, because of some difficulties in implementation.

2 Forests constituting about 23 percent of the country's land area, are inhabited by some of India's poorest and most marginalised communities, who have traditionally depended on the forests for collection of minor forest produce, cultivation, use of water bodies, grazing of animals, etc. The forest laws often deemed tribal people and other forest dwellers "encroachers" or criminals for exercising their customary rights. The historic significance of the Forest Rights Act lies in its potential to remedy this situation by providing legal recognition to forest dwellers' customary rights, while making forest management more open and participatory.

3 The difficulties in the implementation of this Act have resulted in the rejection of a significant number of claims filed by forest dwellers. In some States, rejection rates are more than 60 percent. The failure to recognize community rights, especially to minor forest produce, have been even more widespread. Due process in deciding on the claims has been compromised in many cases, and specific documentary evidence is being insisted upon, contrary to the letter and spirit of the Act. The gram sabhas are not being held at the village or community level as required by the law, and where these are held, their recommendations are often not given sufficient weight.

4 Despite these implementation problems, the NAC believes that the basic Act is robust. In its recommendations no amendments to the Act are proposed by the NAC. A few amendments to the Rules are suggested. Most of the recommendations are in the nature of directions/ guidelines to the States to be issued under Section 12 of the Act by the Ministry of Tribal Affairs.

#### **Recommendations related to Rules**

5 Amendments are proposed to Rule 4(2), to increase the mandatory tribal membership of Forest Rights Committees (the body that inquires into claims) from the present one-third to two-third. Rule 3(1) which requires a quorum of two-third in the gram sabha meeting is proposed to be reduced to a more realistic one-half so that gram sabha meetings are not adjourned in large numbers merely for want of quorum.

6 Rule 2(b) at present recognizes the rights of forest dwellers to minor forest produce for "sustenance". The term is often very narrowly interpreted by implementing officials to mean bare subsistence. Amendment to the Rule is for clarifying that sustenance includes fulfillment of livelihood needs of self and family, including the sale of any produce. Rule 2(d) currently permits transportation in forest area through head-loads, bicycle and handcarts. Amendment is for allowing a wider definition of transportation.

## **Recommendations related to Guidelines**

7 The Act provides for inquiry and verification of claims through the gram sabhas to be convened at the village level. However, in practice, gram sabhas under the Act have been convened mainly at the panchayat level. These larger panchayat sabhas usually include several villages spread over a wide area and do not correspond to actual communities consequently, there can be little local knowledge of people's actual possession and usufruct. The recommendation is for issuing Guidelines clarifying that gram sabhas be convened at the level of actual compact settlements of the hamlet or village. The recommendations provide for identification of such villages and procedure for conduct of gram sabhas.

8 The Act provides for due process in investigating claims as well as transparent and participatory procedures. It also permits admissibility of diverse forms of evidence, recognizing that many official records may not accurately reflect the claims of tribal people. In practice, these provisions are often ignored, leading to high rejection rates of claims. Claims are often rejected at sub-divisional or district levels without hearing the claimant, which is contrary to the principles of natural justice. Officials also often seek documentary evidence, rejecting other evidence which is admissible by the law. The recommendations provide for measures to strengthen due process such as the claimant's right to being heard, emphasis on field verification as evidence and opportunity to reopen cases where there has been non compliance of due procedure and large scale rejection of claims.

9 The Act recognizes the legal right of communities to conserve and manage forests. The recommendation is for inclusion of specific proforma / forms for preparing claims and recognition of community forest resource rights. The process is to be notified, and widely informed to facilitate communities actually accessing these rights. Guidelines to explicitly bar eviction, forced relocation or diversion of forest land in violation of people's rights, or where the gram sabha has not certified the process to be complete.

10 The Act confers rights over Minor Forest Produce (MFP) to people. The recommendation is to provide guaranteed minimum support price to the collectors with freedom to sell their produce either to state agencies or outside. The state agencies need to widen and expand the procurement net to cover all MFP. The Ministry of Environment and Forests needs to review the practice of leasing of minor forest produce such as bamboo to industries, which is not in consonance with law.

11 The recommendations also call for greater awareness generation and facilitating eligible people to continue filing claims by removing deadlines, removal of procedural obstacles to recognition of other community rights, and the need for effective monitoring and grievance redressal.

## **Recommendations of the National Advisory Council**

### **Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006**

i The National Advisory Council (NAC) appreciates that the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, passed in 2006 was a landmark legislation that aimed to undo the historical injustice done to tribals and other forest dwellers by non-recognition of their forest rights. However, it has not yet succeeded fully in achieving its objectives, because of some difficulties in implementation.

ii Forests, constituting about 23% of the country's land area, are inhabited by some of India's poorest and most marginalised communities, who have traditionally depended on these areas for cultivation, collection of minor forest produce, use of water bodies, grazing of animals, etc. The forest laws often deemed tribals and other forest dwellers “encroachers” or criminals for exercising their customary rights. The historic significance of the Forest Rights Act lies in its potential to address this situation by providing legal recognition to forest dwellers' customary rights, while making forest management more open and participatory.

iii The difficulties in implementation of this Act have resulted in the majority of claims by forest dwellers in many States being rejected: in some States, rejection rates are higher than 60%. The failure to recognize community rights, especially to minor forest produce, have been even more widespread. Due process in deciding on the claims has been compromised in many cases, and specific documentary evidence is being insisted upon, contrary to the letter and spirit of the law. The gram sabhas are not being held at the village or community level as required by the Act, and where these are held, their recommendations are often not given sufficient weight.

iv Despite the current implementation problems, the NAC believes that the basic Act is robust. In this context, the National Advisory Council has held wide consultations with officials, civil society groups and experts across many states and the concerned Central Ministries to prepare a concrete set of recommendations in the form of operational guidelines and amendments to some Rules for effective implementation of this law. The purpose of these recommendations is to ensure that the key features of this law – the democratic process of recognizing rights, the protection to a range of livelihood rights, and the powers of communities to use, protect and conserve forests – are not undermined. These have been discussed and approved in the NAC meeting held on 26<sup>th</sup> February 2011.

v The NAC does not recommend any amendments to the Act. It suggests modifications to a few existing Rules. Primarily it recommends that the Tribal Welfare Ministry, Government of India, exercise its powers under Section 12<sup>1</sup> of the Act, to issue directions to all state governments, in the form of Guidelines.

#### **1. Identification and Constitution of Village Level Gram Sabhas**

The Act requires gram sabhas to be held at the level of hamlets (or actual settlements) in Scheduled Areas and requires village level gram sabhas in all areas. Therefore, gram sabhas for the purpose of the

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<sup>1</sup> Section 12 - Power of Central Government to issue directions: “ In the performance of duties and exercise of powers by or under this Act, every authority referred to in chapter IV shall be subject to such general or special directions, as the central government may, from time to time, give in writing.”

Act need to be constituted at the village level to ensure that community rights are properly recognised and gram sabhas are functional. Therefore, Guidelines needs to be issued under Section 12 of the Act on the following lines:

- a) Each panchayat needs to prepare a list of hamlets within its boundaries and have this list passed by its gram sabha.
- b) Hamlets / settlements need to be permitted to 'self-declare' by passing a resolution within a time period, to protect vulnerable and minority groups.
- c) The Sub-Divisional Officers (SDOs) need to consolidate the lists of hamlets and include any self-declarations received. Such lists need to be finalized after considering public comments, if any.
- d) On completion of this process, the process of claiming rights in these hamlets needs to be undertaken without disturbing rights already recognised.
- e) Detailed procedures need to be issued. (Refer to para 1.1 and 1.2 of the Annexure). for the conduct and recording of proceedings of such hamlet level gram sabhas.
- f) Identification of settlements for implementation of the Act needs to be taken on priority basis in all unrecorded or unsurveyed settlements / forest villages, taungya villages, and forest fringe villages, villages with forest recorded within their boundaries, and/or those having significant numbers of forest dependent residents.

**Box 1**

**Amendment to Rules: Rule 4(2) and Rule 3(1)**

**Rule 4(2), relating to quorums,** needs to be replaced with the following:

4(2): The quorum of the gram sabha meeting shall be not less than one half of all members of such gram sabha,  
Provided that at least one-third of those present shall be women;  
Provided further that, where any decision relating to the exercise of forest rights is being taken, at least 50% of rights holders should be present. having significant numbers of forest dependent residents.

**Rule 3(1), relating to membership,** needs to be replaced with the following:

The phrase “one third of members shall be Scheduled Tribes” needs to be replaced by “two-third of members shall be Scheduled Tribes.”

In order to address problems of Forest Rights Committees being dominated by non-forest dwellers.

## **2. Process of Recognition of Rights**

2.1 The Act envisages process of deciding on claims through an open, transparent participatory mechanism, based on people's local knowledge through the gram sabhas. However, decisions on claims are being made by the District Level Committee (DLC) or Sub Divisional Level Committees(SDLC), often without informing the claimants of why their claims were modified or rejected. Even after claims are accepted, rights are often not being recorded in the appropriate records. Therefore, Guidelines need to be issued under section 12 of the Act on the following lines :

- a) Officials of the Forest and Revenue Departments need to remain present during the verification at the village level. If they fail to attend or do not object, this would be deemed consent to the claim, which will operate as a bar on any appeal to SDLC/DLC.
- b) No claim would be modified or rejected by the higher committees without an appeal. In every such

- appeal made against recommendations of the gram sabha, the claimant would be given an opportunity to be heard.
- c) The appeal would be heard in the absence of their representative on the SDLC / DLC, in case the Forest Department makes an appeal against a claim.
  - d) A higher level committee would remand the case to the gram sabha for reconsideration rather than rejecting or modifying it, in case it feels a gram sabha recommendation is incomplete or *prima facie* requires additional examination.
  - e) The DLC would not overturn any decision, except in case of a documented grave violation of law (e.g. collusion), where the gram sabha and the SDLC both have agreed on a claim, The copy of the order will be communicated to the claimant recording the reasons for the decision.
  - f) Status of all claims and reasons for decisions need to be made publicly available at the village and panchayat levels.
  - g) Maps of individual land rights would include entire area under occupation (including allied activities like threshing floors, planted trees, protected grass, fallow lands etc.) for self cultivation, not only the area directly under cultivation.
  - h) The four hectare limit applies only to rights under section 3(1)(a), not to other claims such as conversion of leases, pattas, or other titles (section 3(1)(g)) etc.
  - i) The final map will be prepared by land survey/ record/ revenue department The Forest Rights Committee (FRC) may seek the assistance of the revenue department or any other agencies for the purpose of making the after the completion of the process.
  - j) Rights need to be recorded in the revenue and forest records within two months after their recognition. Individual land titles would be converted to revenue land.
  - k) All decisions of the SDLC and DLC that involve modification of a gram sabha decision need to be speaking orders.

### *Evidence Requirements*

2.2 Most claims are currently being rejected as a result of officials insisting on certain types of evidence. In particular, the Forest Department often insists that names of claimants and/or the lands being claimed should be recorded in their records. This is contrary to the Act as the Act was intended to address such deficiencies of lack of government records. There is a clear list of admissible evidence provided in the Rules which should be drawn upon. New evidence in form of satellite imagery or official records are being introduced at the level of the higher committees, so claims are rejected on the basis of evidence that was neither placed before the gram sabha nor given to the claimant to offer him a chance to counter. Therefore Guidelines need to be issued under section 12 of the Act on the following lines:

- a) Claims accompanied by any two forms of evidence specified in Rule 13 and approved by the gram sabha would not be rejected on extraneous grounds. No particular form of evidence would be insisted upon.
- b) In particular, fine receipts, encroacher lists, primary offence reports, forest settlement reports, and similar documentation rooted in prior official exercises, or the lack thereof, would not be the sole basis of rejection of any claim.
- c) Evidence against any claim that was not placed before the gram sabha would not be admissible at the SDLC or DLC.
- d) Any use of technology, such as satellite imagery, would not be insisted on as the only applicable form of evidence. If introduced, it needs to be well understood by the people, under the control of the FRC at the gram sabha level, and intended to strengthen the process of deciding claims under the Act on basis of field verification and not to replace it.

### **3. Community Forest Resource Rights**

3.1 One of the key features of the Act is to provide recognition to communities' rights to use, protect and conserve community forest resources. This was intended to be a first step towards a democratic frame of forest governance. However, these rights have not been recognized in most states. Therefore, Guidelines needs to be issued under Section 12 of the Act on the following lines:

- a) The administration needs to ensure that rights to community forest resources are recognized for all villages that have Scheduled Tribes s or other traditional forest dwellers among their residents.
- b) In case no community forest resource rights are recognized in a village, reasons need to be recorded. Reference can be made to existing records of community and joint forest management, van panchayats, etc. for this.
- c) The gram sabha would demarcate the boundaries of the community forest resource. Community forest resource rights include all areas where rights are claimed under the Act and approved by the gram sabha, and also include rights over minor and other forest produce within the community forest resource. The rights so recognized would be without any extraneous conditions.
- d) The management committee under Rule 4(e), and any other village level institution, would work under the control of the gram sabha, which shall plan for use and protection of the community forest resource. State agencies would facilitate this process.
- e) Gram sabha's consent would be taken for any action that affects a community forest resource. Rules may be framed by the gram sabha for the purpose of protecting the community forest resource and fines imposed on violators provided due process is followed by the gram sabha. Forest rights holders from outside the village (e.g. pastoralists) can negotiate the terms of exercising their right with the gram sabha.
- f) Any activities that prejudicially affect forests in contravention of regulations by gram sabhas (in any forest area) would not be permitted, since section 5 of the Act empowers all gram sabhas to protect forests, wildlife, natural and cultural heritage, etc.,.
- g) Funds for forestry under various schemes would be under the overall control of gram sabha, subject to social audit and would not be provided through parallel institutions.

3.2 The current Rules do not provide a Form for claiming rights under section 3(1)(i) - the "right to protect, regenerate, or conserve or manage any community forest resource". A new Form C for preparing claims (refer Para 2.1 of Annexure) and a new form for recognising these rights and giving title needs to be inserted as provided Para 2.2 of the Annexure. This would require minor changes to Rule 6(l) and 11 to ensure preparation of these claims by the FRC and distribution of this form to the claimants and certified copy of title to gram sabha under Rule 8. (refer Paras 2.1 and 2.2 of the Annexure).

### **4. Minor Forest Produce**

Minor forest produce (MFP) rights are not being recognized in most areas, or where recognized, are being subjected to extraneous restrictions and regulations that are no longer legally valid. The current regulations being enforced prevent people from collecting, transporting or selling this produce, even though it is important to their livelihoods, and in fact constitutes a major part of the household income of many tribal communities. This problem is severe in protected areas. The restrictions imposed are contrary to the Forest Rights Act. The well-intentioned policy of monopoly state procurement has precluded people from benefiting from higher returns and made them vulnerable to corrupt practices. Some State governments continue to exclude certain types of minor forest produce, in contravention of the definition of MFP given in the FRA. To ensure that rights to MFP are effectively exercised and enjoyed, Guidelines need to be issued under section 12 of the Act on the following lines:

- a) The administration shall ensure that rights to all MFP are recognized in all forest areas and state policies are brought in alignment with the Act. The Act provides that rights to minor forest produce include "all non-timber produce of plant origin, including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers, and the like" (section 2(i)).
- b) The right holders or their federations would be free to sell such MFP to anyone or to undertake processing / value addition / marketing, as well as to transport it using locally appropriate means.
- c) The gram sabhas may impose regulations on collection and transport of MFPs to ensure sustainable use. No fees / charges / royalties would be imposed on such sale except any levied by the gram sabha. The state agencies may facilitate in evolving such regulatory frameworks.
- d) The gram sabha would have the power of issuing transit permits, in accordance with its regulatory powers. State agencies would not insist on additional permits and passes, as these would amount to interfering with the rights of forest dwellers.

**Box 2**

**Amendment to Rules: Rule 2(b) and 2(d)**

**Rule 2(b)** currently reads as follows: "'bona fide livelihood needs" means fulfillment of sustenance needs of self and family through production or sale of produce resulting from self-cultivation of forest land as provided under clauses (a), (c) and (d) of sub-section (1) of section 3 of the Act'. This restricts "bona fide livelihood needs" to only three rights under the Act – i.e. sections 3(1)(a), 3(1)(c) and 3(1)(d) - which is contrary to the law. It also restricts the definition to "sustenance" needs alone.

**This needs to be replaced with:** "bonafide livelihood needs" means fulfillment of livelihood needs of self and family through exercise of any of rights listed in sub-section (1) of section 3 of the Act, and includes sale of any produce or other item for that purpose.'

**Rule 2(d)** currently reads as follows: "'disposal of minor forest produce" under clause (c) of sub-section (1) of section 3 of the Act shall include local level processing, value addition, transportation in forest area through head-loads, bicycle and handcarts for use of such produce or sale by the gatherer or the community for livelihood.'

**This needs to be replaced with:** "disposal of minor forest produce" under clause (c) of sub-section (1) of section 3 of the Act shall include freedom of sale as well as individual or collective processing, value addition, transportation within and outside forest area through locally appropriate means of transport for use of such produce or sale by the gatherer or their cooperatives/federations or the community for livelihood, as per the Gram Sabha's rules for sustainable use if any.'

The proposed amendment will ensure effective exercise of these rights to MFP by allowing (i) freedom of sale and transport, including for cooperatives / federations (ii) value addition through individual and collective processing of MFP, (d) removal of restrictions on means of transportation ('through head-loads, bicycle and handcarts') and substitution with "locally appropriate means of transport."

## 5. Other Community Rights

The Act provides for crucial non-land community rights such as conversion of forest villages to revenue villages, habitat rights for Primitive Tribal Groups (PTGs), etc. Almost none of these are being recognised, with the current focus being on individual land rights. Therefore, a guideline needs to be issued under section 12 of the Act on the following lines:

- a) Records of prior recorded nistari or other traditional community rights (such as Khatian part II in Jharkhand, and traditional forest produce rights in Himachal and Uttarakhand) would be automatically provided to gram sabhas; if these are filed as claims, they would be approved by the

- higher committees automatically under the applicable sections of the Act.
- b) District officials would be made responsible to ensure that all Primitive Tribal Groups (PTGs) receive habitat rights, in consultation with the concerned PTGs' traditional institutions. The DLC would facilitate filing of claims for habitat rights before the concerned gram sabhas.
  - c) The concerned DLC would receive and facilitate the filing of claims by pastoralists before all the concerned gram sabhas.
  - d) Erstwhile forest villages / unrecorded settlements would be converted to revenue villages. This would be followed by recognition of individual rights. The conversion would include the actual land-use of the village in its entirety, including lands required for current or future community uses like schools, health facilities, public spaces etc., as identified by the gram sabha. Records of the Forest Department would not be the sole basis for conversion.

## **6. Protection Against Eviction, Diversion of Forest Lands and Forced Relocation**

Large-scale displacement of forest dwellers continues despite safeguards in the law. People are being removed from forest lands, protected areas, wild life sanctuaries and areas proposed for development projects without recognition of rights or due compliance with safeguards. This is a serious violation of the law. Therefore, Guidelines need to be issued under Section 12 of the Act on the following lines:

- a) Eviction of any forest dweller prior to completion of the process of recognition of rights is a violation of section 4(5) of the Act.
- b) All diversions of forest land would take place in compliance with the July 30, 2009 order ((F. No. 11-9/1998-FC (pt) dated 30.07.2009 to all State governments) of the Environment Ministry, which flows from the requirements of the Act.
- c) The DLCs would review and submit a report to the nodal agency, through the State Level Monitoring Committee (SLMC), regarding all major diversions of forest land since the Act came into force (i.e. 01.01.2008), to monitor compliance with the July 30th, 2009 order of MoEF. These would be put in the public domain.
- d) Safeguards against arbitrary relocation under section 4(2) of the Act may be provided, along the lines of the October 2007 order of the Environment Ministry, with suitable changes, as suggested in Para 3 of the Annexure. It may be noted that the Environment Ministry is only responsible for the administrative task of determining wildlife habitats; the framing of policy and procedure remains the responsibility of the Tribal Ministry as the nodal agency for implementation of the Forest Rights Act.
- e) The SLMC and DLC would monitor compliance with sections 3(1)(m) and 4(8) of the Act, which recognize the right to rehabilitation and just compensation. Any person evicted without compliance with due process will be entitled to compensation including alternative land as per the law.

## **7. Awareness-Raising, Monitoring and Grievance Redressal**

Despite the far reaching impact of this law on lives of marginalized communities, there has been inadequate efforts for building systems for awareness, training, effective monitoring and grievance redressal in a sustained and systematic manner. The Act provides that violation of its provisions will be a criminal offence, punishable by a fine of Rs. 1000 (Section 7), prosecution for this offence is subject to a sixty day notice by the gram sabha to the SLMC (Section 8). The combination of a nominal fine with a cumbersome procedure makes this very difficult to activate. To address the issues of awareness building, training and grievance redressal, suitable Guidelines need to be issued on the following lines:

- a) Each State, in consultation with the Ministry of Tribal Affairs, shall constitute a team of experts to prepare training materials on the Act.
- b) SDLC and DLC would make district-wise plans for trainings of revenue, forest and tribal



- welfare departments' field staff, officials, FRC and panchayat representatives. Public meetings need to be held in all villages in or near forest areas.
- c) The SLMC shall meet atleast in two months and report to the Ministry of Tribal Affairs regarding not only the status of claims but also the compliance with the steps required under the Act, details of claims recognized, reasons for rejection and pendency status. Information will be compiled for all the rights listed in the Act and put on the official website.
  - d) Public hearings need to be organized on local bazaar days or at other appropriate locations on a quarterly basis, at which at least two Sub Divisional Level Committee members will be present. Complaints that reveal actions by authorities in violation of the Act would be referred to the SLMC
  - e) Grievance redressal officers need to be appointed at all levels by State governments to receive complaints regarding violations of the Act by officials. Where such complaints are in the nature of an appeal, these can be referred to the appropriate committee; otherwise the officer would conduct an enquiry into the matter. (Refer Para 4.1 of the Annexure)
  - f) If any gram sabha issues notice of a violation under section 8 of the Act, the State Level Monitoring Committee would direct the holding of a summary enquiry and take action if any that is required. A public notice would be put up in the concerned village stating the results of the enquiry and the action taken, and informing the gram sabha that it may initiate a criminal case under section 7 if no action was taken. (Refer Para 4.2 of the Annexure)

## **8. General Policy Recommendations**

- a) State government-imposed deadlines to file claims for recognition of rights under the law are not in consonance with the Act; these need to be lifted and new claims accepted. All District Level Committees need to prepare lists of all claims received, the status of those claims, and reasons for decisions taken and put in public domain. In areas where a large number of complaints are received, or rejection / modification has occurred without any appeal on record or in violation of due process, the process needs to be reinitiated.
- b) Since the Act has given rights over MFP to people, including all "non-timber produce of plant origin" like bamboo, tendu, etc., there is a need to provide guaranteed minimum support price to the collectors with freedom to sell either to state agencies or outside. While the state agencies need to widen their procurement net to cover all forms of MFP, the state monopoly needs to be discontinued.
- c) The Ministry of Environment & Forest needs to review the practice of leasing of minor forest produce such as bamboo to industries, and evolve practices which are in consonance with the letter and spirit of the Act.
- d) A special Central Task Force or an equivalent high-level body for effective coordination and monitoring needs to be created to ensure that the policies of all concerned departments are brought in alignment with the requirements of the Forest Rights Act and Panchayats (Extension to Scheduled Areas) Act. In particular, a long term frame of democratic forest management needs to be evolved, including the Forest Department's role as a facilitator in this process along with other departments such as Panchayati Raj, Tribal Welfare, etc.

## ANNEXURE

### 1. Proposed Formulation For Guidelines on Determination and Conduct of Village-level Gram Sabhas

#### 1.1 Identification and Notification of Villages for Gramsabhas

- Each gram panchayat would prepare a list of the hamlets / villages comprising a natural or customary community within its boundaries and place it before its gram sabha, which may make modifications and approve the same. In preparing this list the gram panchayat may take into account existing wards where these correspond to customary villages or settlements.
- Forest villages and unrecorded settlements will be treated as villages for the purposes of this Act.
- Any settlement being considered a “village” for purposes of this Act will ordinarily be less than 100 families in size. Some villages of vulnerable or minority groups may be left out in the listing process. Therefore, public notice would be given that any settlement that wishes to declare itself as a village may do so through passing a resolution to that effect within a time period (with a 2/3rds quorum of all adult residents of the settlement) and communicating the same to the SDO and the concerned gram panchayat.
- A draft list of villages within the sub-division will be prepared by the SDO by consolidating the lists received from each gram panchayat and also incorporating any declarations received from individual settlements.
- The draft list will be made public in all gram panchayat offices and posted in all settlements for objections for a period of two months.
- On the basis of objections received, and consultation with the concerned settlement if necessary, the SDO will finalize the draft list of villages in the subdivision.
- Such list of villages will be notified by the District Collector and be made available in Gram Panchayat, Revenue and other relevant records.
- On completion of the above process, the procedure for recording of rights will be undertaken as per the notified villages. However, rights already recognised under this Act will not be disturbed.
- Identification of settlements for implementation of the Act will be taken on priority basis in all unrecorded or unsurveyed settlements / forest villages, taungya villages, and in villages on fringe of forests, villages with forest recorded within their boundaries, and/or those having significant numbers of forest dependent residents. This applies to all forest areas, including protected areas.

#### 1.2 Conduct of Gram Sabha at the village level

- Any gram sabha for the purposes of this Act will be held in the following manner.
- Every meeting of the gram sabha will be held in public, and no resident of the village will be denied entry.
- As far as possible, the Gram Sabha will work on the basis of consensus, where “consensus” means the people present either agree with the proposal or are neutral, and none of them is in opposition.
- In the absence of consensus on any issue in a meeting, that matter will be discussed in the meeting to be held after one week or later, as decided by the Gram Sabha. If there is no consensus in the second meeting also, a decision will be taken on the basis of a majority.
- The Gram Sabha will hold a meeting at least once in two months. The Gram Sabha may decide a fixed date (means English date, Indian date or the day of the week), time and place of the meeting permanently. In such a case there would be no need to provide any notice for specific meetings.
- A chairperson and a Secretary will be selected for conducting the meeting of the Gram Sabha ordinarily for one year. No Sarpanch /President of the Panchayat will be eligible to act as the chairperson of the Gram Sabha.
- The Gram Sabha may also decide that the Secretary of the Gram Panchayat will act as the Secretary of the Gram Sabha, in which case he shall be bound to do so. Otherwise the gram sabha may select any

- other person to act as Secretary.
- The Secretary or Chair of the Gram Sabha may at any time be recalled by a simple majority vote and a new person selected for the post by the gram sabha.
- In the absence of quorum, the meeting will be considered postponed; those present may fix a date for the next meeting, provided at least one week's notice is issued. The quorum will be mandatory for any adjourned meetings.
- While concluding the meeting, a brief statement of the decisions taken in the Gram Sabha will be prepared by the Secretary. That statement will be read out in the meeting. After the statement is approved, the Chairperson and Secretary will sign or put their mark, along with all those present.
- Apart from its regular meetings, in the following circumstances special meetings of the Gram Sabha may be held:
  - If it is so decided in the general meeting of the Gram Sabha,
  - If there is any matter the Secretary or Chairman feels need to be considered by the Gram Sabha,
  - On written information given to the Secretary by at least five percent of total members of Gram Sabha or 25 members, whichever is more.
- The decisions taken in a particular meeting shall remain in force unless revised in a subsequent meeting.

## 2 Proposed Forms for Claims to and Recognition of Community Forest Resource Rights

The following forms may be inserted in the Rules to provide for claim forms for community forest resource rights and recognition of such rights. The forms quote the sections of the Act for clarity.

### 2.1 Form for claiming Community Forest Resource Rights

<p><b>FORM – C</b>  <b>CLAIM FORM FOR RIGHTS TO COMMUNITY FOREST RESOURCE</b></p>
<p>[See Section 3(1)(i) of the Act and Rule 11(1)(a) and (4)(a)]</p>
<p>1. Village/Gram Sabha:          2. Gram Panchayat:          3. Tehsil/ Taluka:          4. District:          5. Name(s) of members of the gram sabha (Attach as separate sheet, with status as ST / OTFD / others indicated next to each member).  <i>Presence of few ST/OTFD is sufficient to make the claim.</i></p>
<p>We, the undersigned residents of this Gram Sabha hereby resolve that the area detailed below and in the attached map comprises our Community Forest Resource over which we are claiming recognition of our rights. Upon recognition of its rights, this Gram Sabha shall have the power to protect, conserve, regenerate and manage, this area of forest for sustainable use and to protect its water sources, wildlife and biodiversity, as well as the natural and cultural heritage of this community (under section 3(1)(i) and 5 of the Act).</p>
<p>[Attach a map of the community forest resource, showing location, landmarks for the customary and traditional boundaries of the village / community forest resource, and description of each part of the area. Please note that this need not correspond to official boundaries.]</p>
<p>Khasra / Compartment No.(s), if any and if known:</p>
<p>Bordering Villages:          1.          2.          3.          (This may also include information regarding sharing of resources and responsibilities with any other villages.)</p>
<p>List of Evidence in support          (Please see Rule 13)</p>

## 2.2 *New Form for Recognition of Community Forest Resource Rights*

The new title format for community forest resource rights would be inserted in Annexure IV as follows.

<b>FORM FOR RECOGNITION OF COMMUNITY FOREST RESOURCES</b>	
Village/ Gram Sabha: Gram Panchayat: Tehsil/ Taluka: District: Scheduled Tribe/ Other Traditional Forest Dweller: ST/OTFD/Both Description of boundaries including customary boundary, by prominent landmarks, and by khasra/ compartment No:	
Within the said area, this community has the right to protect, manage, conserve and regenerate forests, forest lands and forest resources for sustainable use as per sections 3(1)(i) and 5 of the Act. No conditions except those specified in that Act and accompanying Rules are imposed on this right.	
We, the undersigned, hereby, for and on behalf of the Government affix our signatures to confirm the forest rights as mentioned in the Title to the above mentioned gram sabha.	
(Divisional Forest Officer / Conservator of Forests)  (District Collector/ Deputy Commissioner)	(Deputy District Tribal Welfare Officer)  (Zilla Parishad Members of DLC)

## 2.3 *Minor amendments to Rules to accommodate two Forms above.*

<b>Amendment to Rules</b>	
Amendment to Rule 11, namely, insertion of a new sub-Rule 11(4A) for purpose of new Claim Form, stating: 11(4A): The Forest Rights Committee shall also prepare the claims on behalf of Gram Sabha for community forest resource rights in Form C as provided in Annexure I of these Rules.	
Rule 6(k) to be replaced with: 6(k): ensure easy and free availability of proforma of claims to the claimants as provided in Annexure-I (Forms A, B & C) of these rules;	
Amendment to Rule 8, namely, insertion of a new sub-Rule 8(hh) for the purpose of the new Title Form, stating that: 8(hh): ensure that a certified copy of the record of community forest resource rights and title under the Act, as specified in Annexure IV to these rules, is provided to the concerned Gram Sabha;	

## 3 **Proposed Guideline for Identification of and Relocation from Critical Wildlife Habitats (CWH)**

- Any Proposal for notifying a critical wildlife habitat shall be submitted through the State Level Monitoring Committee in whose jurisdiction such habitat is situated, for scrutiny. The said application must include:
  - Physical, topographical and ecological details along with relevant maps of the areas to be determined as CWH;
  - Location of human habitations within the proposed CWH along with their demographic, economic and social details;
  - A list of families and settlements likely to be affected by the declaration of the critical wildlife habitat;
  - Evidence as required under sections 4(2)(b) and 4(2)(c) of the Act, including scientific studies as well as documentation by Biodiversity Management Committees in the form of People's

- Biodiversity Registers that at the minimum provide the data on the habitat of the animal species, population data and reasons for change in population of the said species, human animal conflict, quantification of impact of human presence on animal numbers and animal habitat, and further studies on the extent of dependence and interaction of the affected communities with the forest resources and the like within the proposed critical wildlife habitat;
- Certified resolutions from the Gram Sabhas included within the proposed critical wildlife habitat that the process of recognition and vesting of rights under the Act has been completed;
  - A certification that the affected Gram Sabhas have been informed in writing that it is proposed to include their habitations and habitats in critical wildlife habitats and that a copy of the complete proposal prepared by the State Government for the same has been provided to them.
- Within three months of sending an application for the notification of a critical wildlife habitat in a protected area, the State Level Monitoring Committee shall constitute an Expert Committee for this purpose as required under the Act and refer the application to it.
  - The Expert Committee shall consist of the following members:
    - Three elected representatives, including the MLAs or Zilla Parishad member representing the areas that would fall within or be dependent on resources within the proposed critical wildlife habitat;
    - Two independent ecological experts familiar with the area concerned;
    - Two independent experts in social and tribal issues familiar with the area concerned;
    - Member nominated by the Ministry of Tribal Affairs;
    - Member nominated by the Ministry of Environment and Forests;
    - Two members nominated by the State government, including at least one from a civil society organisation working on social issues.
  - The Expert Committee shall examine the application for completeness, consistency and veracity, and, within two months, either admit the application, request additional information or return it to the State government along with its reasons for doing so; Provided that the Expert Committee shall in particular independently verify that the process of recognition of rights under the Act is complete in the concerned areas.
  - Within two months of admitting the application, the Expert Committee shall initiate public consultations on this application, which process shall include:
    - one or more public hearings within the critical wildlife habitat, ensuring that reasonable opportunity is provided for all affected to attend the public hearings;
    - Public notices in local languages shall be issued and publicity methods used at least 30 days prior to public hearings;
    - Gram sabhas can invite additional experts to be present and participate in the public hearing;
    - At the public hearing, the expert committee shall in the local language describe the areas and boundary of the proposed critical wildlife habitat, the details of the various habitations and persons to be affected and the data provided in the application to the nodal agency;
    - A quorum of two-thirds of the adults in the area for which the public hearing is being held shall be required;
    - The Expert Committee shall certify that the public hearings are held in an atmosphere free of all coercion, and in case the Committee would find that such coercion is occurring, it shall suspend the public hearing and shall return the application to the State government for re-submission;
    - The gram sabha may on its own undertake studies for ascertaining the necessity of declaring CWH including preparation of a People's Biodiversity Register and/or request other individuals or agencies to conduct studies, data collection, etc., and permission and financial support for such studies shall be granted by the State government within 15 days of submission of application; provided that permission shall be deemed to have been granted in case no response is received within 15 days;

- The Expert Committee shall have the power to summon witnesses, call for documents, and undertake any other actions or investigations it feels necessary.
- Based on the evidence and analysis presented by the State Government in its application, the deliberations during the Public Hearing, and additional studies or information from its own investigation and other studies, the Expert Committee shall determine whether the proposed area is required to be kept as inviolate for the purposes of the wildlife conservation and would be declared as a critical wildlife habitat, and send its report to the State Government and each Gram Sabha affected by the critical wildlife habitat providing reasons for its determination of an area as critical wildlife habitat or rejection thereof; Provided that the Expert Committee shall be required to respond in its report to comments made in public hearings, including suggested changes in the boundaries or location of the Critical Wildlife Habitat, opposition to the notification of the habitat, and the like.
- The State Government or any affected gram sabha or individual in writing may then submit to the Expert Committee any objections or comments on its decision within 45 days of the day when the Expert Committee has conveyed its decision to them, along with additional evidence; the Expert Committee will consider these submissions and give a final decision within one month of the end of the 45 day period.
- After this final decision is reached by the Expert Committee to recommend a specified area to be notified as Critical Wildlife Habitat, the Ministry of Environment and Forests shall intimate the State government to initiate the process of preparing a resettlement package.
- The State Government will then prepare a resettlement package as per section 4(2)(d), and the said package shall ensure the following:
  - communities are shifted as a unit without dispersal of families;
  - in the case of agricultural communities, land for land is provided at a minimum of two hectares per nuclear family;
  - alternative resources and compensation must be provided to replace loss of access to common resources;
  - access to religious sites, medicinal plants, burial grounds and similar areas would be provided for;
  - all amenities and development infrastructure, including schools, medical facilities, and other infrastructure are provided at the new site.
  - Compensation shall be calculated on the basis of value addition to economy and ecology spread over 50 years (along the lines of NPV calculations). When planning resettlement or compensation, the State Government shall ensure that all those rights holders whose rights will be abridged, abrogated or curtailed by the declaration of the critical wildlife habitat will be included in compensation and resettlement packages.
- The identification of the resettlement site shall be decided upon in consultation with the affected gram sabha.
- The details of the resettlement package shall be announced through posters in the local language in all gram panchayat offices and through beat of drum in the villages, with such details including:
  - The names of the families, villages and settlements to be resettled;
  - The location and amount of alternative land to be provided;
  - The alternative resources and compensation to be provided.
- After a period of not less than thirty days following the announcement of the resettlement package, gram sabhas in the affected area shall be convened within two months for the purpose of requesting their consent to the resettlement and the resettlement package.
- At least fifteen days prior to each gram sabha meeting, details on the proposed resettlement package shall be made available in each hamlet. The gram sabha meetings shall take place in a free and open atmosphere, without the presence of police or other authorities.
- No resolution of consent to resettlement and the resettlement package shall be considered valid unless at least two-thirds of members are present and voting.

- Upon the recommendation of the State Level Monitoring Committee, the proposal will then be recommended to the Ministry of Environment and Forests for notification of the critical wildlife habitat. If there are any deficiencies, the proposal must be returned.
- A resettlement monitoring committee shall be constituted consisting of the Forest Rights Committee/s constituted by the concerned Gram Sabhas for the purpose of determining rights under the Act who shall monitor the progress of establishment of the resettlement package. This Committee shall report the progress to their respective Gram Sabhas and to the State Level Monitoring Committee on a monthly basis or as frequently as required.
- No resettlement shall begin until at least one year after land acquisition and allocation, grant of titles, construction of dwellings, provision of infrastructure and amenities, and so on is complete and operational, during which time the community shall retain the right to its original habitation as well as to access and utilise the new site. The resettlement process shall commence only after the affected Gram Sabhas certify that the resettlement package is fully in place and is satisfactory.
- The resettlement package shall not be considered complete under section 4(2)(f) until, after this one year has passed, all affected gram sabhas pass a resolution of satisfaction.
- In case the procedure in these Rules has not been completed within five years of the notification of the critical wildlife habitat, the notification shall stand cancelled.

#### **4 Grievance Redressal Procedures**

##### **4.1 Procedure for functioning of Grievance Redressal Officers**

In order to provide for grievance redressal, the following points may be incorporated as directions under Section 12 of the Act.

##### *Grievance Redressal Officers (GROs)*

- GROs would be appointed at three levels as follows.
  - The Tehsildar and BDO (or equivalent officials) shall be designated as Block Level GROs.
  - At the district level, the designated official would not be of lesser rank than an Additional Collector.
  - At the State level, such official would not be of lesser rank than a Joint Secretary.
  - GROs would not be drawn from Departments (e.g. Forest Department) where there may be a conflict of interest.
- There will be no limit on the number of GROs at any level.
- The names, designations and contact details of the GROs would be painted on the walls of gram panchayat offices. A Help-line and an online system of Internet-accessible complaint tracking would also be set up, with a State-wide unique number assigned to each complaint.

##### *Procedure for Grievance Redressal*

- In the event of an appeal and complaint being contained in the same representation, the receiving authority/GRO will be responsible for separation of the points under the headings viz. appeal points and complaint points.
- An appeal refers to any representation challenging a decision given by the Gram Sabha, SDLC or DLC.
- Complaint refers to any other representation related to the recognition, exercise or violation of a right provided under the Act, including those relating to violations of the procedure of recognition.
- Any representation would first be filed before any Block level GRO.
- The GRO will issue an acknowledgement to the complainant. He will separate the points of appeal, if any. Where these points of appeal relate to a decision by the gram sabha or the Sub Divisional Level Committee, and the time period has not expired, he will send these points to the appropriate appellate authority i.e. SDLC or DLC with intimation to the applicant within seven working days on receipt of

complaint. The GRO would also register the complaint with the State-level database and communicate the registration number to the complainant, along with instructions for tracking the complaint. In case the complaint refers specifically to a Government official/functionary of a rank higher than that of the GRO, the complaint shall be forwarded to the appropriate GRO higher in rank, under intimation to the complainant.

- If the points of appeal relate to a decision of the DLC, or if the sixty day deadline for appeals is over, the GRO would prepare a report on the same and place it before the DLC for action within two weeks. The GRO may also suggest to the complainant that he/she file a fresh claim for reconsideration.
- The complaint prima facie may or may not involve violation of the Act or the Rules. In either case the GRO shall intimate the complainant and concerned persons within seven days of the receipt of the complaint, the date and time fixed for a summary inquiry on the concerned site. The communication would also be published widely and mandatorily on Notice Board of Panchayat Samiti and Gram Panchayat.
- After conducting a Summary Inquiry, the GRO may request the gram sabha secretary to convene a special Gram Sabha to ascertain facts and opinion in necessary cases.
- GRO will submit his report within two months of receipt of complaint on the findings of the Summary Inquiry and opinion of the Gram Sabha and her/his instructions regarding the complaint to the authority higher in rank to the official complained against for initiating departmental action against the errant official. In case, violation of the Act or Rules as listed below is established in the departmental inquiry, punishment as per service rules shall be imposed against the officer responsible and recorded in his service register.
  - Eviction, destruction of standing crop, or attacks on dwellings of forest dwellers prior to completion of the recognition of rights process, or after a right has been conferred.
  - Destruction of community forest resources or of other forests or wildlife in contravention of a gram sabha decision.
  - Malicious prosecution of forest dwellers exercising their rights.
  - Extortion of bribes from forest dwellers.

#### **4.2 Procedure in case a Gram Sabha passes a Resolution amounting to a notice under Section 8**

If any resolution by any gram sabha alleging a violation of the Act or Rules is brought to the attention of any GRO, he/she shall immediately communicate the same to the Secretary of the SLMC as well as the concerned department, which would hold a summary inquiry on the basis of the resolution within three weeks. The results of this inquiry and the resolution would be placed before the SLMC shall, within 10 days ensure that a public notice is put up in the gram panchayat office and the concerned hamlets / village detailing the statements of the resolution, the result of the inquiry, the decision of the SLMC on the matter and the action being taken if any.